

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re:

Case No.: 03-46098

*Deborah A. Weber,*  
  
Debtor(s).  
-----

Chapter 13 Case

**NOTICE OF HEARING AND MOTION OBJECTING TO CONFIRMATION  
OF CHAPTER 13 PLAN AND FOR DISMISSAL OF CASE**

TO: All parties in interest pursuant to Local Rule 9013-3.

1. Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at 10:30 a.m. on July 8, 2004, in Courtroom No. 7 West, 7th Floor, United States Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than 10:30 a.m. on July 7, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than July 2, 2004, which is three business days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case under chapter 7 of title 11, United States Code, was filed on August 27, 2003 and it was converted to a chapter 13 case on March 5, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. §§ 1322 and 1325 and Bankruptcy Rule 3015. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9006-1, 9013-1 through 9013-5, and such other Local Rules as may pertain. Movant requests relief with respect to denial of confirmation of the debtor's proposed Chapter 13 plan dated March 4, 2004, (the "Plan"), and for dismissal of the case.

6. The Plan calls for the debtor to make payments to the Trustee of \$220 per month for 36 months, for a total of \$7,920 (the "Plan Funds").

7. The Plan calls for the Plan Funds, net of the Trustee's estimated fee, to be

disbursed as follows:

IRS priority tax claim (est.)	4,000
Toyota Credit secured claim	3,200
Nonpriority unsecured creditors	-0-

8. On Schedule I, debtor lists her occupation as a self-employed lawyer, with gross income of \$5,500 per month. The debtor is married, with an 18-month old daughter, but her husband is not employed and has no income, according to Schedule I.

9. The debtor lists expenses of \$6,564 on Schedule J, such that she has negative disposable income of -\$1,064/mo.

10. The debtor also lists various expenses on Schedule J that are unreasonable or unnecessary for a family of three (including a toddler), including the following:

Home maintenance (repairs and upkeep)	300
Food	1,000
Medical and dental expenses	600
Auto installment payment (for vehicle already provided for in plan)	334

11. The debtor has made only a single payment of \$220 to the Trustee, for the payment that was due April 4, 2004. She is currently delinquent for the May 2004 payment.

12. The debtor's Plan is not feasible and confirmation should be denied pursuant to 11 U.S.C. § 1325(a)(6).

13. The debtor's Plan has not been filed in good faith and confirmation should be denied under 11 U.S.C. § 1325(a)(3).

14. Confirmation was originally scheduled for May 6, 2004 and has been continued twice: once due to the debtor's non-attendance at the originally scheduled meeting of creditors (subsequently rescheduled by the debtor), and once to enable the debtor to retain bankruptcy counsel to address the Trustee's concerns. No counsel has appeared for the debtor and she remains pro se. The debtor's delay in resolving the discrepancies in the debtor's schedules and in responding to the Trustee's concerns are grounds for dismissal under 11 U.S.C. § 1307(c).

15. If testimony is required, Thomas E. Johnson or another employee of the Trustee, will be called to testify at the hearing on the objection.

WHEREFORE, the Trustee moves the court for an order denying confirmation of the debtor's proposed Chapter 13 Plan, for dismissal of the case, and such other relief as may be just and equitable.

Jasmine Z. Keller, Chapter 13 Trustee

Dated: June 15, 2004

/e/ Thomas E. Johnson

Thomas E. Johnson, ID # 52000  
Margaret H. Culp, ID # 180609  
Counsel for Chapter 13 Trustee  
310 Plymouth Building  
12 South 6th Street  
Minneapolis, MN 55402  
(612) 338-7591

#### **VERIFICATION**

I, Thomas E. Johnson, employed by the Chapter 13 Trustee, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: June 15, 2004

/e/ Thomas E. Johnson

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re:

Case No.: 03-46098

*Deborah A. Weber,*  
  
Debtor(s).  
-----

Chapter 13 Case

**MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION AND MOTION  
TO DISMISS**

FACTS

The Trustee relies upon the facts set forth in her verified motion, which, for the sake of brevity, will not be repeated here.

LEGAL DISCUSSION

The “feasibility” requirement for confirmation of a Chapter 13 plan is largely subsumed in 11 U.S.C. § 1325(a)(6), which requires a finding that “the debtor will be able to make all payments under the plan and to comply with the plan.”

Feasibility is a fact-bound concept. . . . At its simplest, feasibility requires that the debtor’s income exceed expenses by an amount sufficient to make the payments proposed by the plan. When the debtor’s budget will not support the proposed payments into the plan, the plan is not feasible, and confirmation is refused. 3 K. Lundin, *Chapter 13 Bankruptcy*, 3rd ed., § 198.1 at 198-1, -2 (2000) (citations omitted).

The Trustee submits that the proposed Plan is clearly not feasible. According to her budget, the debtor has negative disposable income and cannot make *any* plan payments. Alternatively, there are expenses in the budget that appear out of line for a family of three, and there is an expense included in the budget for a car payment for a car being “crammed down” in the plan, which should be omitted. Absent a determination of the debtor’s true disposable income, the plan should not be confirmed. The plan is not feasible and confirmation should be denied.

The determination of whether a Chapter 13 plan has been proposed in “good faith” is based on the totality of the circumstances. In re Molitor, 76 F.3d 218 (8<sup>th</sup> Cir. 1996). “The bad faith determination focuses on the totality of the circumstances, specifically: (1) whether the debtor has stated his debts and expenses accurately; (2) whether he has made any fraudulent

representation to mislead the bankruptcy court; or (3) whether he has unfairly manipulated the bankruptcy code.” 76 F.3d at 221 (citing [\*In re LeMaire\*, 898 F.2d 1346, 1349 \(8th Cir.1990\)](#)). Here, the debtor has proposed essentially a zero percent plan and appears to have tailored her plan payment toward that end, rather than accurately stating her income and expenses to disclose her true available disposable income. Confirmation should be denied on this ground, too.

Dismissal of the case is appropriate for “cause” under 11 U.S.C. § 1307(c), based on the debtor’s inability to propose a confirmable plan, and her unwillingness to take reasonable steps to resolve the disposable income problem and related expense issues, despite having been given additional time to address these concerns.

### CONCLUSION

The debtor’s Plan is not feasible and has not been filed in good faith. Confirmation should be denied and the case dismissed.

Respectfully submitted:

Dated: June 15, 2004

/e/ Thomas E. Johnson

Thomas E. Johnson, ID # 52000  
Margaret H. Culp, ID # 180609  
Counsel for Chapter 13 Trustee  
310 Plymouth Building  
12 South 6th Street  
Minneapolis, MN 55402  
(612) 338-7591

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re:

Case No.: 03-46098

*Deborah A. Weber,*  
  
Debtor(s).  
-----

Chapter 13 Case

**UNSWORN DECLARATION FOR PROOF OF SERVICE**

I, Thomas E. Johnson, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on June 15, 2004, I served Notice of Hearing and Motion Objecting to Confirmation of Chapter 13 Plan and for dismissal of case, Memorandum of Facts and Law, and proposed Order on the individual(s) listed below, in the manner described:

**By e-mail:**

United States Trustee  
1015 United States Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

**By first class U.S. mail, postage prepaid:**

Deborah A. Weber  
13305 Loveland Circle  
Minnetonka, MN 55305

Chase Manhattan Bank USA, NA by  
eCAST Settlement Corporation, as its agent  
Becket and Lee LLP, Attorneys/Agent  
P.O. Box 35480  
Newark, NJ 07193-5480

Countrywide Home Loans, Inc.  
c/o Brice, Vander Linden, et al.  
P.O. Box 829009  
Dallas, TX 75382-9009

eCAST Settlement Corporation, assignee of  
Household Bank and its assigns  
Becket and Lee LLP, Attorneys/Agent  
P.O. Box 35480  
Newark, NJ 07193-5480

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: June 15, 2004

/e/ Thomas E. Johnson

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re:

Case No.: 03-46098

*Deborah A. Weber,*

Chapter 13 Case

Debtor(s).  
-----

**ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN AND DISMISSING  
CASE**

At Minneapolis, Minnesota, \_\_\_\_\_.

The above-entitled matter came on for hearing before the undersigned United States Bankruptcy Judge on the Chapter 13 Trustee's objection to confirmation of the debtor's proposed Chapter 13 plan and motion to dismiss.

Appearances were noted in the minutes.

Upon the verified motion and all of the files, records and proceedings herein:

IT IS ORDERED:

1. Confirmation of the debtor's Chapter 13 plan is DENIED.
2. This case is DISMISSED.

\_\_\_\_\_  
United States Bankruptcy Judge